IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8026 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JOSHI JAYPARKASH AMBALAL

Versus

TALUKA DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 8026 of 2003

MR JV JAPEE for Petitioner No. 1

MR MR MENGADEY, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 12/06/2003

ORAL JUDGEMENT

This petition is filed challenging the notice issued by the Taluka Development Officer i.e. respondent

No.3 herein directing the petitioners to pay the actual amount of L.T.C and twice the amount of L.T.C. as penalty, failing which to take penal action and prosecution. The said notice has been issued on the premises that the amount of L.T.C. has been obtained by producing false certificates of travelling, without giving an opportunity of hearing.

2. RULE. Mr. M.R.Mengadey, learned AGP waives service of notice of rule on behalf of respondent No.1. With the consent of all the learned Counsel for the parties, this matter is taken up for final hearing.

3. At the time of hearing of this petition, learned advocate Mr.J.V.Japee, appearing on behalf of the petitioner submits that in large number of identical matters raised upon identical notices, this Court has passed an order directing the respondents to give suitable installments to the petitioner to pay the amount of penalty subject to the payment of principle amount within specified time limit and also subject to filing appropriate undertaking. Learned advocate Mr.J.V.Japee has produced before me a copy of one such order passed by this Court (Coram :- Jayant Patel, J.) on 28.03.2003 in Special Civil Application No. 1577/2003 and other allied matters.

4. After having heard the learned advocates appearing for the respective parties and after having gone through the contents of the petition and the documents attached therewith as well as after having perused the earlier order passed by this Court, I am of the view that the present petition being identical with the earlier matters, similar directions are required to be given. Accordingly, following directions are given.

4.1) The petitioner shall file separate undertaking to this Court that they shall not raise any objection in future regarding the recovery of the amount of penalty directly by appropriating 33% of the salary and other perquisites i.e. actual pay until he is in service and he shall also not raise any objection to the balance recovery to be made in case the concerned petitioner is retiring in normal course and he shall not raise any objection for recovery of such amount from the retiral benefits. The said undertaking shall also include that the petitioner shall deposit the principle amount of LTC on or before 30.06.2003 and such undertaking shall be filed within a period of two weeks from today before

this Court by the petitioner and the copy of the said undertaking shall be produced by the petitioner before the concerned authorities.

4.2) The petitioner shall also file undertaking as per circular dated 3.10.1988 before authority on or before 25.06.2003.

4.3) If the principle amount of LTC is deposited on or before 30.06.2003 and if such undertaking as per above para 4.1 is filed before this Court and the copy of the same is produced before the authorities, and if further undertaking is filed before concerned authority as per above para 4.2 then in that case, the authorities shall recover twice the amount of LTC as penalty by directly appropriating 33% of the actual pay of the concerned employees and only 67% of the actual pay shall be actually paid to the petitioner. Such recovery shall continue until the amount of penalty is fully recovered and if any of the concerned petitioners is retiring before the amount is fully recovered, the concerned authorities shall recover the said balance amount from the retiral benefits including the provident fund, gratuity, etc. by directly appropriating towards the balance amount of penalty.

4.4) Until the principle amount of LTC and the penalty, as observed earlier, is fully recovered, the authorities shall not take any action for criminal prosecution or departmental inquiry against the employees concerned as per circular dtd. 3.10.1988. It is made clear that upon failure of the petitioner of depositing the principle amount of LTC and upon raising dispute regarding recovery of penalty inspite of the aforesaid undertaking to this Court and to the concerned authority the aforesaid directions shall automatically stand vacated in case of petitioner and the authorities shall be at liberty to lodge criminal prosecution against the concerned petitioners in accordance with law and the authorities shall also be at liberty to take departmental proceedings including that of suspension of the employee concerned. The aforesaid liberty to the employer/authorities shall be in addition to the liability of the petitioner, as the case may be, for breach of the undertaking and for the proceedings under the Contempt of Court Act.

5. Though this Court has given the aforesaid directions keeping in mind the earlier order passed by this Court in similar such matters, it is high time to take a serious view of the matter as no person is allowed to claim L.T.C. from his employer without incurring such expenses. The petitioner in this petition has surrendered himself without facing any inquiry or apprehended criminal proceedings, by agreeing to the payment of the principle amount as well as the penalty leviable on him. Since the petitioner has shown his willingness to pay up the amount as demanded in the notice, the Court is not expressing any opinion as to whether the petitioner has in fact travelled or not and since this Court has granted the benefit of payment by installments and he was absolved from further proceedings because of the said order, this Court restrains itself from passing any order on that point so as to give the similar treatment to the present petitioner who is also put in similar set of circumstances. The fact, however, remains that the Court is deprecating the recurrence of such events in future.

6. In view of the aforesaid directions issued by this Court, the learned advocate Mr.J.V.Japee appearing for the petitioner in this petition, seeks permission to withdraw the petition. Permission is accordingly granted. This petition is, therefore, dismissed as having been withdrawn. Rule is discharged. There shall be no order as to costs.

(K.A.Puj, J.)
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